

Senate Bill 275

By: Senators Jackson of the 24th, Hudgens of the 47th, Cowser of the 46th and Goggans of the 7th

A BILL TO BE ENTITLED  
AN ACT

To amend Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, so as to create the Municipal Court Clerks' Retirement Fund of Georgia; to define certain terms; to create the Board of Commissioners of the Municipal Court Clerks' Retirement Fund of Georgia; to provide for membership, appointment, and terms; to provide for powers and duties; to provide for audits; to provide for participation in the fund; to provide for membership dues; to provide for the payment of a portion of certain fines and forfeitures into the fund; to provide for retirement benefits; to provide for surviving spouses' benefits; to provide for related matters; to provide conditions for an effective date and automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is amended by adding a new chapter to read as follows:

"CHAPTER 26

ARTICLE 1

47-26-1.

As used in this chapter, the term:

(1) 'Board' means the Board of Commissioners of the Municipal Court Clerks' Retirement Fund of Georgia.

(2) 'Clerk' means a clerk of a municipal court as defined in Code Section 36-32-13.

(3) 'Fund' means the Municipal Court Clerks' Retirement Fund of Georgia.

(4) 'Member' means a member of the fund.

ARTICLE 2

47-26-20.

(a) There is created the Board of Commissioners of the Municipal Court Clerks' Retirement Fund of Georgia. The board shall consist of seven members as follows:

(1) The Governor or the Governor's designee;

(2) An appointee of the Governor who is not the Attorney General; and

(3) Five clerks who shall be members of the fund, provided that at least one but not more than two of such clerks shall be retired clerks receiving retirement benefits pursuant to this chapter.

(b) The members of the board provided for by paragraph (3) of subsection (a) of this Code section shall be appointed by the Governor. The first such members shall be appointed by the Governor to take office on January 1, 2010, for initial terms as follows: two such members shall be appointed for terms of one year; two such members shall be appointed for terms of two years; and one such member shall be appointed for a term of one year. Thereafter, the Governor shall appoint successors upon the expiration of the respective terms of office for terms of three years. All such members shall serve until their successors are appointed and qualified. Such members shall be eligible for reappointment to successive terms of office as members of the board.

(c) The board shall elect a chairperson from the clerks serving as members of the board who actively hold office as clerks. The term of the chairperson shall be established by rules of the board.

(d) If a vacancy occurs in the membership of the board appointed pursuant to subsection (b) of this Code section, the remaining members of the board shall elect a person meeting the qualifications specified by paragraph (3) of subsection (a) of this Code section to fill such vacancy for the unexpired portion of the term.

(e) Four members of the board shall constitute a quorum for the transaction of business.

(f) All of the members of the board shall serve without pay, but they shall be reimbursed for their actual expenses in attending meetings of the board and performing the duties required of them as members of the board.

47-26-21.

(a) There is created the office of secretary-treasurer of the fund. The secretary-treasurer shall be selected and appointed by the board and shall serve at the pleasure of the board. His or her compensation shall be fixed by the board. He or she shall have such power and authority as may be given him or her by the board and shall perform such duties and services as the board may desire.

(b) The secretary-treasurer shall make quarterly reports to the board showing the total amount of money in his or her hands at the time such report is made and also showing a full accounting of receipts and expenditures since his or her last quarterly report.

(c) The secretary-treasurer shall give a good and sufficient surety bond in an amount to be determined by the board. The bond shall be made payable to the board and shall be contingent upon the proper and faithful performance of his or her duties as secretary-treasurer.

47-26-22.

(a) The board shall have the power and duty to:

(1) Provide for the collection of all moneys in connection with this chapter;

(2) Provide for the payment of all administrative expenses;

(3) Hear and decide all applications for retirement benefits under this chapter;

(4) Provide for the payment of all retirement benefits that may be determined to be due under the rules and regulations as adopted by the board;

(5) Make all necessary rules and regulations not inconsistent with the laws of this state for its government and for the government of the employees who are employed to administer this chapter;

(6) Determine and fix rules of eligibility of persons to receive retirement benefits under this chapter;

(7) Make provisions for refunds and repayments to persons who may be entitled to receive them;

(8) Keep records of all its meetings; and

(9)(A) Subject to the terms and limitations of this paragraph, the board is authorized to adopt from time to time a method or methods of providing for increases in the maximum monthly retirement benefit payable under Article 5 of this chapter for persons retiring under this chapter. Such method shall be based upon:

(i) The recommendation of the actuary of the board;

(ii) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(iii) Such other factors as the board deems relevant. Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board shall determine.

(B) Increases made pursuant to subparagraph (A) of this paragraph shall become effective as of January 1 or July 1, or both January 1 and July 1, of the year in which

such increases are granted; provided, however, that no such increase shall exceed 1 1/2 percent of the maximum monthly retirement benefit then in effect.

(b) The board shall have all other powers necessary for the proper administration of this chapter.

47-26-23.

(a) The board shall have control of the funds provided for in this chapter; and all funds received by the board shall be deposited in a special account to the credit of the fund.

Benefits under this chapter and all administrative expenses shall be paid from such funds.

The board shall have authority to expend the funds in accordance with this chapter.

(b) The board shall have full power to invest and reinvest the assets of the fund and to purchase, hold, sell, assign, transfer, and dispose of any securities and other investments in which assets of the fund have been invested, any proceeds of any investments, and any money belonging to the fund; provided, however, that such power shall be subject to all terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the 'Public Retirement Systems Investment Authority Law.'

(c) The board is authorized to employ agents, including, but not limited to, banks or trust departments thereof, and to enter into contracts with such agents for their services as investment advisors and counselors in making recommendations for investments and in making investments if the board so authorizes.

47-26-24.

The board, by gift, grant, or bequest, may take any money, real or personal property, or any other thing of value and may hold or invest the same for the uses and purposes of the fund in accordance with this chapter.

47-26-25.

The board shall keep permanent records of retirement benefits granted and shall keep proper records and books concerning the operation of the board. Each year, the board shall present an annual financial statement of the fund at the annual meeting of the Georgia Municipal Courts Training Council.

47-26-26.

The state auditor is authorized and directed to make an annual audit of the acts and doings of the board and to make a complete report of that audit to the General Assembly. The state auditor shall not be required to distribute copies of the report to the members of the General Assembly but shall notify the members of the availability of the report in the

manner which he or she deems to be most effective and efficient. The report shall disclose all moneys received by the board and all its expenditures, including administrative expenses and payments made as annuities and benefits. The state auditor shall also make an audit of the affairs of the board at any time when requested by a majority of the board or the Governor.

### ARTICLE 3

47-26-40.

(a) Each clerk in this state shall participate in the fund. Each clerk shall make application to the fund upon forms to be furnished for that purpose by the board, giving such information as may be required by the board. Such application shall be made not later than July 1, 2010, or within 30 days of first becoming a clerk, whichever date is later. Each member shall pay \$75.00 per month into the fund. All clerks shall remit to the board, not later than the tenth day of each subsequent month, the amount due under this subsection.

(b) If any payment required to be made to the fund by a clerk remains unpaid 60 days from the date such payment is due, there shall also be due a late charge, which late charge shall be interest from the due date computed at 10 percent per annum or the sum of \$5.00, whichever is the greater amount. In the event of such delinquency, in order to be eligible to receive any benefits provided by this chapter, a clerk shall remit the late charge with such delinquent payment.

(c) No creditable service shall be granted for any month for which dues are in arrears on the last day of the calendar year during which the dues were due, but payment shall be deemed timely and creditable if such dues and late charges are received by the board on or before the tenth day of the succeeding month following the last day of the preceding calendar year.

47-26-41.

Initial membership in the fund shall commence on July 1, 2010. Initial payments into the fund shall cover the period beginning July 1, 2010.

### ARTICLE 4

47-26-50.

(a) A portion of each fine collected and each bond forfeited and collected in any case for violation of provisions of Title 40, which case is before any municipal court, shall be paid to the secretary-treasurer according to the following schedule:

(1) Three dollars for any fine or bond forfeiture of more than \$20.00, but not more than \$35.00;

(2) Four dollars for any fine or bond forfeiture of more than \$35.00, but not more than \$50.00;

(3) Five dollars for any fine or bond forfeiture of more than \$50.00, but not more than \$100.00; and

(4) Five percent of any fine or bond forfeiture of more than \$100.00.

(b) For purposes of determining amounts to be paid to the secretary-treasurer, the amount of the fine or bond collected shall be deemed to include costs. The amounts provided for shall be paid to the secretary-treasurer before the payment of any costs or any claim whatsoever against such fine or forfeiture. The collecting authority shall pay such amounts to the secretary-treasurer on the first day of the month following that in which they were collected or at such other time as the board may provide. With such payment, there shall be filed an acceptable form which shows the number of cases in each of the above categories and the amounts due in each category. It shall be the duty of the collecting authority to keep accurate records of the amounts due the board so that the records may be audited or inspected at any time by any representative of the board under its direction. Sums remitted to the secretary-treasurer under this Code section shall be used as provided for elsewhere in this chapter.

(c) If the clerk or other collecting authority whose duty it is to collect and remit moneys to the fund under subsection (b) of this Code section shall fail to remit such moneys within 60 days of the date on which such remittal is due, such moneys shall be delinquent; and there shall be imposed, in addition to the principal amount due, a specific penalty in the amount of 5 percent of the principal amount per month for each month during which the funds continue to be delinquent, provided that such penalty shall not exceed a total of 25 percent of the principal due. In addition to such penalty, interest shall be charged on the delinquent moneys at the rate of 6 percent per annum from the date such moneys became delinquent until they are paid. All moneys which have not been paid to the fund within 60 days of the due date shall be delinquent. By affirmative vote of all members, the board, upon the payment of the delinquent moneys together with interest and for good cause shown, may waive the specific penalty otherwise charged under this subsection.

## ARTICLE 5

47-26-70.

(a)(1) A member who retires with at least 20 years of service as a clerk shall, upon attaining the age of 60, receive retirement benefits of \$1,700.00 per month upon

retirement, provided that such member shall have served continuously as a clerk for the four years immediately preceding such member's retirement.

(2) A member who retires with at least 16 years of service as a clerk shall, upon attaining the age of 60, receive retirement benefits of \$1,360.00 per month upon retirement, provided that such member shall have served continuously as a clerk for the four years immediately preceding such member's retirement.

(3) A member who retires with at least 12 years of service either as a clerk shall, upon attaining the age of 60, receive retirement benefits of \$1,020.00 per month upon retirement, provided that such member shall have served continuously as a clerk for the four years immediately preceding such member's retirement.

(b) In lieu of the retirement benefits provided in subsection (a) of this Code section, a member, upon retirement, may elect to receive 90 percent of the benefits such member is entitled to receive under subsection (a) of this Code section during the remainder of such member's life; and, after such member's death, such member's surviving spouse shall receive a monthly sum during the lifetime of the surviving spouse equal to 50 percent of such amount. In order to be eligible for such benefits, the surviving spouse shall have been married to the member for at least six years immediately preceding the member's death. Such benefits shall not commence until after the surviving spouse reaches 60 years of age.

47-26-71.

In the event of the death of any clerk who has not retired under any of the provisions of this chapter, but who was eligible to do so, the surviving spouse shall receive a surviving spouse's benefit calculated pursuant to subsection (b) of Code Section 47-26-70. In order to receive such benefits, any such surviving spouse shall be at least 60 years of age and have been married to such clerk for at least six years immediately preceding the death of such clerk.

47-26-72.

Any other provisions of this chapter to the contrary notwithstanding, a clerk may terminate his or her official duties as clerk and be eligible for retirement benefits if he or she has fulfilled the qualifications necessary therefor; but if he or she has not reached the age of 60 at the time he or she terminates his or her official duties, he or she shall not commence receiving his or her retirement benefits until he or she reaches that age.

47-26-73.

Any member may withdraw the total sum, without interest, which he or she has paid into the fund. In order to become eligible to rejoin the fund and to receive any benefits under

this chapter after such withdrawal, he or she must repay the entire amount which he or she has withdrawn, plus interest at 6 percent per annum. A member shall not receive credit for any service after such withdrawal unless such member pays the dues which he or she would have paid had such member been a member of the fund during such period of service, plus interest on such amounts at 6 percent per annum. If any clerk dies before being retired, the total amount, without interest, which has been paid by such member into the fund shall be paid to his or her estate. If, after retiring, any clerk should die without leaving a surviving spouse and without having received the amount in benefits equal to the amount which he or she had paid into the fund, the difference, without interest, shall be paid to his or her estate. If after retiring, any clerk should die leaving a surviving spouse and such surviving spouse should thereafter die without having received the amount of benefits equal to the amount which had been paid into the fund less the amount received by such clerk before his or her death, the difference, without interest, shall be paid to his or her estate.

47-26-74.

Notwithstanding any other provision of this chapter to the contrary, a clerk shall not receive credit for retirement purposes for any service performed as a clerk prior to membership in the fund.

## ARTICLE 6

47-26-90.

If the funds derived from the sources provided for in this chapter are not sufficient at any time to enable the board to pay, in full, each person determined to be entitled to benefits under this chapter, then the prorated percentage of such payments shall be made to each such person until the fund shall be replenished sufficiently to enable the board to resume such payments in accordance with this chapter. Before resuming such payments, all persons who received deficiency payments shall be paid in full. In no event shall the board or any member of the board be liable to any person for any deficiencies in payments made under this Code section."

## **SECTION 2.**

This Act shall become effective on July 1, 2010, only if it is determined to have been concurrently funded as provided in Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public Retirement Systems Standards Law"; otherwise, this Act shall not become effective and shall be automatically repealed in its entirety on July 1, 2010, as required by subsection (a) of Code Section 47-20-50.



260

**SECTION 3.**

261 All laws and parts of laws in conflict with this Act are repealed.